IN THE

# Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1495

WILMA RIGGS, PETITIONER,

*versus*

LAURENS DISTRICT 56, A BODY POLITIC AND CORPORATE; DR. CHARLES L. CUMMINS, JR., DISTRICT SUPERINTENDENT, AND THE FOLLOWING MEMBERS OF THE BOARD OF TRUSTEES: DR. W. FRED CHAPMAN, JR., CHAIRMAN OF THE BOARD; RICHARD SWETENBERG, RALSA FULLER, JOHN ADAIR, SAM BLACKMON, CALVIN COPPER, AND JOHN E. WILLINGHAM, ALL PERSONALLY, INDIVIDUALLY, JOINTLY AND SEVERALLY, AND THE SUCCESSORS IN THE OFFICE OF EACH, RESPONDENTS.

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SOUTH CAROLINA SUPREME COURT

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## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SOUTH CAROLINA SUPREME COURT

The respondents respectfully pray that this Court deny a writ of certiorari to review the judgment of the South Carolina Supreme Court entered in this case on October 11, 1978.

### QUESTION PRESENTED

Is 42 U. S. C. § 1981 violated when a school district transfers a white teacher to another school, in order to satisfy H. E. W. requirements as to proper white-black faculty ratios, where the teacher suffers no loss of money, benefits or rights?

## STATEMENT OF THE CASE

The petitioner, a white female teacher, alleges discrimination based upon race because of her transfer to another school within Laurens School District 56. It was found by the trial court that she was transferred by her Superintendent because (a) enrollment was declining at her former school, (b) the Superintendent believed that the teacher transferred should be white so as to achieve the proper black-white teacher ratio in accordance with regulations of the Department of Health, Education and Welfare, and (c) the petitioner was least senior among the white teachers at her former school and therefore the proper one to be transferred (Petition for Writ of Certiorari, App. pp. 4a-6a).

Petitioner declined, for personal reasons, to accept the transfer to another school eight (8) miles away from her school in Joanna, and voluntarily submitted her resignation (Petition for Certiorari, App. at p. 3a).

The trial court ruled in favor of the petitioner based upon 42 U. S. C. § 1981, but the South Carolina Supreme Court reversed the finding of liability under this section. The court ruled that the petitioner was not discriminated against, and that she had no contractual right to be employed at the school of her choice (Petition for Certiorari, App. at p. 22a).

## REASONS FOR DENYING THE WRIT

**The decision below was properly decided on the facts and involves no important or unresolved question of Federal law.**

The petitioner asserts that, because 42 U. S. C. § 1981 secures to all persons "the same right to make and enforce contracts . . . as is enjoyed by white citizens," she has a right to remain as a teacher in the school of her choice for as long as she chooses. In denying her relief, the Supreme



Court of South Carolina ruled completely in accordance with previous rulings of this Court.

Rule 19 of the Rules of this Court provides that a review on writ of certiorari from a state court ruling will be granted

> "Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."

Neither circumstance exists in the instant action. The petitioner has failed to present any important or unresolved question of federal law.

The petitioner cites no case in which it has been held that a transfer of a teacher without any loss of money, benefits or rights constitutes a violation of 42 U. S. C. § 1981. Race was but one factor in petitioner's transfer in the instant case (Petition for Certiorari, App. at pp. 4a-6a). Her transfer was ordered by the respondent Superintendent based upon his desire to comply voluntarily with H. E. W. regulations regarding black-white teacher ratios. (Petition for Certiorari, App. pp. 6a-7a).

Every opinion of this Court which is cited by the petitioner involves racial discriminations in which there were deprivations of substantial rights, such as termination of employment, *McDonald v. Sante Fe Trail Transportation Company,* 427 U. S. 273 (1976), denial of admission to school, *Runyon v. McCrary,* 427 U. S. 160 (1976), refusal to sell to blacks, *Jones v. Alfred H. Mayer Company,* 392 U. S. 409 (1968), denial of seniority status and higher paying job assignments to blacks, *Johnson v. Railway Express Agency,* 421 U. S. 454 (1975), and denial of membership to blacks in a community swimming pool association, *Tillman v. Wheaton-Haven Recreation Association,* 410 U. S. 431 (1973).

The petitioner has cited three (3) opinions from the United States Court of Appeals for the Fifth Circuit allegedly in support of her contention that § 1981 provides a basis for challenging discriminatory work assignments.[1] In each of the three, the plaintiff had been actually damaged and there was clear intent to discriminate. In *Garner*, a black policeman was transferred because of race to a dangerous patrol area under unusual discriminatory circumstances. In *Boudreaux*, the plaintiffs were black longshoremen who were losing certain jobs and receiving undesirable jobs because of their race. In *Guerra*, the plaintiff alien was transferred to a less desirable and lower paying job because of his nationality.

The threshold requirement for petitioner is that she prove that she has a protected property or contractual interest in a particular job assignment. The Supreme Court of South Carolina held that the petitioner had no such property interest in continued employment on her own terms and, therefore, no basis on which to assert a § 1981 claim. This is entirely consistent with this Court's ruling in *Board of Regents of State Colleges v. Roth*, 408 U. S. 564 (1972), in which it was held:

> "To have a property interest in a benefit, a person clearly must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Id.* at 577.

The petitioner's "hope" that she could remain at the Joanna school fails to satisfy this requirement.

As the Court also stated in *Adler v. Board of Education of City of New York*, 342 U. S. 485, 492 (1952):

> "It is equally clear that [persons employed or seeking employment in the public schools] have no right to work for the State in the school system on their own terms. (Citation omitted). They may work for the school system upon the reasonable terms laid down by the proper authorities of New York. If they do not choose to work on such terms, they are at liberty to . . . go elsewhere."

[1] *Guerra v. Manchester Terminal Corp.*, 498 F. 2d 641 (5th Cir. 1974); *Boudreaux v. Baton Rouge Marine Contracting Co.*, 437 F. 2d 1011 (5th Cir. 1971); *Garner v. Giarrusso*, 571 F. 2d 1330 (5th Cir. 1978).



The South Carolina Supreme Court was correct in ruling that

> "Ms. Riggs had no vested contractual right to be employed at the Joanna Elementary School. The school district was not bound, contractually or otherwise, to grant respondent's personal wish to remain at Joanna. Appellant fulfilled any obligation it may have had to Ms. Riggs by offering her alternative employment within the district at no loss of salary or benefits." (Petition for Writ of Certiorari, App. page 21a).

This Court ruled in *Johnson v. Railway Express Agency*, 421 U. S. 454 (1975), that 42 U. S. C. § 1981 "relates primarily to racial discrimination in the making and enforcement of contracts." *Id.* at p. 459. The decision of the state Supreme Court in the instant matter is certainly in line with the holding in *Johnson*.

If this Court were to grant the petitioner's Writ and adopt her far-fetched position, it would lead to the paralysis of voluntary, good faith integration in the schools. It would also eventually lead to the paralysis of any court-ordered teacher assignments in which race was a factor.

Laurens County School District 56 formerly operated under laws establishing segregation as a legal requirement. The District was therefore under an affirmative obligation to take measures to effect faculty desegregation. *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U. S. 1 (1971); *Green v. County School Board*, 391 U. S. 430 (1968); *Keyes v. School District No. 1*, 413 U. S. 189 (1973). The respondent Superintendent in the instant case at-

tempted to faithfully discharge his duties and achieve the proper racial ratio among the teachers in his district. These respondents certainly should not be penalized for their efforts.

As stated by Justice Rehnquist in *Dayton Board of Education v. Brinkman,* 433 U. S. 406 (1977), local autonomy of school districts is a vital national concern. *Milliken v. Bradley,* 418 U. S. 717, 741-742 (1974), *San Antonio Independent School District v. Rodriguez,* 411 U. S. 1 (1973), and *Wright v. Council of City of Emporia,* 407 U. S. 451, 469 (1972).

Further, this Court's decision in *University of California Regents v. Bakke,* .... U. S. ...., 96 S. Ct. 2733 (1978), has reinforced affirmative action plans. Although there is no true majority decision in the case, the various opinions filed agree that race can be a factor in the school admission context. As stated by Justice Blackmun:

> "It is gratifying to know that the Court at least finds it constitutional for an academic institution to take race and ethnic background into consideration as one factor, among many, in the administration of its admissions program." *Id.* at p. 57, L. Ed. 2d 844.

Justice Blackmun's comment acknowledges this Court's acceptance of "affirmative action" plans, so long as they are not rigid "quota" plans.[2]

In the instant case the respondents were only implementing a voluntary plan which would give Laurens School District 56 the proper racial balance at the various school faculties. This is not unusual for school administrators. Indeed, under the so-called Singleton Plan set forth in *Singleton v. Jackson Municipal Separate School District,*

[2] The Court in *Bakke,* through the various opinions, seems to favor the so-called "Harvard Plan" of considering race as one factor in a college admissions policy rather than the quota plan of the University of California at Davis under which 16 places in the medical school class were set aside for minority students.



419 F. 2d 1211 (5th Cir. 1970), the United States Court of Appeals for the Fifth Circuit ordered the racially-mixed assignment of teachers and staff in 15 school districts in six states. If the school administrators in the instant case did not have the power to consider race in this context then integration of faculties in the schools would be impossible to achieve. To adopt the petitioner's position in this case would mark the end of voluntary integration efforts by school officials.

The Supreme Court of South Carolina has correctly decided this case. Its ruling conflicts with no previous ruling of this Court. For this Court to consider the petitioner's case on the merits would trivialize 42 U. S. C. § 1981 and enable teachers throughout this country to dictate the terms of their employment.

## CONCLUSION

For the reasons stated herein, the Court should deny a Writ of Certiorari to the South Carolina Supreme Court.

Respectfully submitted,

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